

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
	:	
v.	:	
	:	
JASON BROWN	:	NO. 04-CR-505

MEMORANDUM

Gene E.K. Pratter, J.

January 26, 2005

Defendant Jason Brown has filed a Motion to Suppress Physical Evidence Seized from 924 Chanticleer Drive on December 7, 2004. The Government filed a Memorandum of Law in Opposition to Defendant's Motion to Suppress Evidence on January 3, 2005. A hearing on this Motion was held before the Court on January 7, 2005.

Brown's sole argument in his Motion is that the Government illegally searched 924 Chanticleer Drive after arresting Brown and this illegal search tainted the subsequent search for which the authorities had a warrant. Brown contends that the initial search was done without a warrant or exigent circumstances that justified the search. Essentially Brown argues that items seen during the first search were improperly used to support the affidavit that was submitted in order to secure the warrant for the second search.

The United States make two arguments to rebut Brown's contention. First, the Government asserts that no search of 924 Chanticleer Drive was conducted prior to the search with the warrant (although the Government does admit to performing a protective security sweep of the condominium). Second, even if a search had occurred, the affiant relied on information unrelated to and independent of the earlier search when he presented the probable cause affidavit

as part of the application for a search warrant. Because the unrelated information would provide sufficient basis for issuance of a search warrant and the alleged initial entry into the premise was not the basis for the second search, the second search was not illegal (and the fruits thereof not excludable) even if an initial search occurred and was improper.

The Court finds that the protective security sweep by the Government during and immediately following the apprehension of Jason Brown was justified and that the affidavit supporting the application for a search warrant was supported by legally obtained evidence. Therefore, Defendant Jason Brown's Motion to Suppress Physical Evidence Seized from 924 Chanticleer Drive is denied.

I. FACTUAL BACKGROUND

On August 26, 2004, Jason Brown was charged in a 47 Count indictment with 7 counts of bank fraud, in violation of 18 U.S.C. § 1344, 39 counts of using a false social security number, in violation of 42 U.S.C. § 408(a)(7)(B), and one count of identity fraud, in violation of 18 U.S.C. § 1028(a)(3). The Government alleges that Brown defrauded a number of banks and financial institutions of approximately \$178,075. Allegedly, Brown would open accounts in the names of people whose identities he had stolen or made up using bogus checks or falsely obtained credit. Brown would then allegedly withdraw as much cash as possible before the bank discovered the fraud. To open these accounts, a stolen personal identifier, such as a stolen or falsely obtained social security number, was necessary. Brown also allegedly used false identification cards.

Special Agent Howard Goodwin, United States Postal Inspection Service, was investigating identity theft and credit card fraud. (Tr. 1/7/05 at 7). His investigation led him to the Farmer and Mechanics Bank, where an account was receiving fraudulent checks from a Thomas Puklaveck. (Id. at 14). The name on the account was "Jayson T. Browns," who Agent

Goodwin discovered was listed as a resident of 924 Chanticleer Drive, Cherry Hill, New Jersey. (Id. at 13, 16). On February 6, 2004, Agent Goodwin and a Cherry Hill police officer went to the Chanticleer Drive residence to investigate further. (Id. at 15). A neighbor identified a photograph of the Defendant Jason Brown as “Jayson Timmy Browns,” the resident of 924 Chanticleer Drive. (Id.). Mail carriers informed Agent Goodwin that mail to 924 Chanticleer Drive was being sent to both “Jayson Timmy Browns” and “Thomas Puklaveck.” (Id. at 17).

Agent Goodwin contacted the United States marshals who had an outstanding bench warrant for Defendant Jason Brown due to an alleged violation of probation. (Id.). On February 9, 2004, the marshals went to 924 Chanticleer Drive. (Id.). Agent Goodwin and Agent Henry Herrera, both of the United States Postal Inspection Services, went with the marshals to assist in the arrest and to further investigate Jason Brown’s alleged connection to Goodwin’s ongoing fraud investigation. (Id. at 17, 68). After some difficulty in getting Brown out of the condominium and arresting him, the facts of which are not relevant to the issue at hand, the Government agents on the scene performed a protective security sweep of Brown’s garage and condominium. (Id. at 27). Agent Goodwin stated the reason for this sweep was that the vestibule where the arrest occurred was narrow and could become a “fatal funnel,” subjecting the officers to potential danger if compatriots of Brown’s happened to be in the residence which overlooked the narrow stairwell leading directly to the area where Brown was arrested. (Id. at 26). Furthermore, the sound of a car alarm emanating from the contiguous garage at the time of arrest led the agents to believe another person or persons could be in the immediate area. (Id. at 27).

During the security sweep, agents entered into the garage and saw a late model, white Chrysler Pacifica sports utility vehicle, bearing Pennsylvania tags FML2227. See Affidavit for

Search Warrant at p. 2, ¶ 4. The agents also went upstairs into Brown's actual condominium living space. (Tr. 1/7/05 at 27). Agent Goodwin asked Brown for permission to perform a search, but Brown refused. (Id. at 31). When Brown requested a different shirt, one of the agents went to the second floor of the residence and brought down a new shirt for Brown. (Id. at 31). Brown was then taken away by the marshals, while Agent Herrera remained in the condominium to secure it. (Id. at 32-33).

Agent Goodwin contacted the on-duty Assistant United States Attorney ("AUSA") to discuss obtaining a search warrant for Brown's residence. (Id. at 32). Based on Agent Goodwin's experience, he believed it likely that documentary evidence of bank fraud would be in the premises. The AUSA recommended contacting the condominium office to find out who actually owned 924 Chanticleer Drive. (Id. at 32-33). The office personnel informed Agent Goodwin that 924 Chanticleer Drive was purchased by "Jayson T. Browns." (Id. at 33). The social security number given by "Jayson T. Browns" was determined to not be assigned to anyone named "Jayson T. Browns" or Jason Brown. (Id. at 34). Goodwin also had determined that 924 Chanticleer Drive was partially financed by a mortgage obtained by "Jayson T. Browns" using the same false social security number. (Id. at 33). Additionally, the condominium property manager was shown a photograph of Jason Brown and identified the man in the photograph as "Jayson T. Browns," believed by the manager to be the owner of 924 Chanticleer Drive. (Id.).

After discovering the above information, Agent Goodwin again contacted the AUSA, who asked Agent Goodwin to obtain more information before filing the application for a search warrant. (Id. at 34). Agent Goodwin then investigated the vehicle found in the garage by using the license plate information obtained in the security sweep. (Id. at 48). This check revealed

that the vehicle was rented by “Jayson T. Browns” and was rented by using a fake Delaware license in that name. (Id. at 34). The photograph on the license was of Defendant Jason Brown. (Id. at 9).

A copy of this Delaware driver’s license had previously been obtained by Agent Goodwin from Farmers and Mechanics Bank in New Jersey. (Id.). The license had been used to open an account at that bank. (Id.). The date of birth on the license does not match Defendant Brown’s date of birth, and the social security number on the license is not assigned to either Jayson T. Browns or Jason Brown. (Id. at 10).

Based on his investigation, Agent Goodwin produced a six-paragraph affidavit supporting the application for a search warrant. Included in this affidavit is information about the vehicle, the information obtained from the condominium office and property manager, and a description of the Delaware driver’s license. The Honorable Joel B. Rosen, United States Magistrate Judge for the District of New Jersey, issued a search warrant for 924 Chanticleer Drive, and allowed a search to obtain “any and all records and documents relating in any way to the mortgage on the SUBJECT PREMISES or the rental Chrysler Pacifica located in the garage at SUBJECT PREMISES.”

While Agent Goodwin was performing his investigation, Agent Herrera had remained at the condominium to secure the location. (Id. at 69). He was stationed within the condominium’s living room. (Id.). Agent Herrera testified that he did not perform any search. (Id. at 69-70). He did speak with some of Jason Brown’s family members who claim they had come to the apartment to get some medicine for Brown’s son. (Id. at 70, 105). Agent Herrera does not recall why the family members had come. (Id. at 71).

Agent Khary Freeland, United States Postal Inspection Services, was contacted by Agent Goodwin to assist in Agent Goodwin's investigation. (Id. at 78). Specifically, Agent Freeland went to 924 Chanticleer to help secure the residence. (Id. at 79). While waiting for the search warrant to be issued, Agent Freeland testified that he did not conduct any search. (Id. at 79-80). However, he did draw a sketch of the floor plan of the residence. (Id. at 80). This sketch was later used during the legal search after the issuance of the search warrant. (Id.) Agent Freeland had no communication with Agent Goodwin while Agent Freeland was at the residence or prior to the issuance of the search warrant. (Id. at 81).

After the search warrant was issued, the agents went through the apartment. (Id. at 40). In a storage area, the agents found a duffel bag that contained numerous documents and other material that corroborated all the various identities that Agent Goodwin had been investigating. (Id. at 41, 44). Additionally, the duffel bag contained personal identifiers, checkbooks, and other information obtained through fraudulent accounts. (Id. at 44).

II. LEGAL BACKGROUND

A. Search of Home Prior to Obtaining Search Warrant

A person's house cannot be unreasonably searched or intruded into by the government. U.S. CONST. amend. IV. A search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984). There is little doubt that a person has an "expectation of privacy" in his home. In fact, the intrusion into a person's home is "the chief evil which the wording of the Fourth Amendment is directed." United States v. United States District Court, 407 U.S. 297, 313 (1972). Therefore, searches of a person's home without a warrant is presumptively unreasonable under the Fourth Amendment. Payton v. New York, 445 U.S. 573, 598 (1980). The police need both probable

cause and exigent circumstances to justify a nonconsensual warrantless intrusion. Kirk v. Louisiana, 536 U.S. 635, 638 (2002).

A protective sweep¹ is "a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others." Maryland v. Buie, 494 U.S. 325, 327 (1990). A protective sweep is a narrow search of "closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched," id. at 334, and "may extend only to a cursory inspection of those spaces where a person may be found." Id. at 335. Additionally, the sweep should be as brief as necessary to "dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises." Id. The government must demonstrate "articulable facts" that "would warrant a reasonably prudent officer to believe that there are individuals who pose a danger in other areas of the house" to justify a search beyond the immediate adjoining areas around the arrest. Sharrar v. Felsing, 128 F.3d 810, 822-23 (3d Cir. 1997).

B. Independent and Unrelated Source for Search Warrant

Evidence derived from illegally obtained evidence, the "fruit of the poisonous tree," must be excluded. Wong Sun v. United States, 371 U.S. 471, 488 (1963). However, this taint can be cured if the government can show that it had an independent source for obtaining the evidence.

Segura v. United States, 468 U.S. 769, 799 (1984); United States v. Perez, 280 F.3d 318, 338 (3d

¹ A "protective sweep" does not apply to the immediate area around an arrestee; instead that is covered by a search incident to a lawful arrest. Maryland v. Buie, 494 U.S.325, 334 (1990). Since the issue here seems to be that the search covered areas beyond the immediate area around Brown during his arrest, the parties have not addressed whether the search was a valid search incident to arrest. Further, the Government does not even concede that a search occurred.

Cir. 2002). If a search warrant is obtained after an illegal search has occurred, the Court must determine two things: that “neutral justice would have issued the search warrant even if not presented with information that had been obtained during an unlawful search” and that the first search did not prompt the officers to obtain the search warrant. Perez, 280 F.3d at 339.

In this regard, the court must determine that, ignoring the illegally obtained evidence, the remaining evidence would have provided probable cause to issue a search warrant. Id. The mere fact that some of the averments in an affidavit are tainted does not invalidate the entire warrant. United States v. Johnson, 690 F.2d 60, 63 (3d Cir. 1982).

Probable cause for a search warrant requires that there is a “fair probability that contraband or evidence of a crime will be found in a particular place.” Illinois v. Gates, 462 U.S. 213, 238 (1983). Probable cause to arrest a person does not provide probable cause to search that person’s home. United States v. Jones, 994 F.2d 1051, 1055 (3d Cir. 1993). On the other hand, “direct evidence linking the residence to criminal activity is not required to establish probable cause.” United States v. Burton, 288 F.3d 91, 103 (3d Cir. 2002) (citing United States v. Hodge, 246 F.3d 301, 305 (3d Cir. 2001); United States v. Whitner, 219 F.3d 289, 297 (3d Cir. 2000); United States v. Conley, 4 F.3d 1200, 1207 (3d Cir. 1993); Jones, 994 F.2d at 1056). Probable cause can be “based on an accumulation of circumstantial evidence that together indicates a fair probability of the presence of contraband at the home of the arrested.” Id.

III. DISCUSSION

In the present case, Mr. Brown is asserting that an illegal search occurred at some time after his arrest and before the issuance of the search warrant. His primary basis for this argument is that the agents were in the residence at 924 Chanticleer Drive without either a warrant or Brown’s permission. The Court is cognizant of the concerns raised by the Defendant

and of the Defendant's suspicions of impropriety in the government's actions, but does not find that, even if the Government had violated Brown's Fourth Amendment rights, the warrant is defective.

The agents have explained that their initial entry into Mr. Brown's home was to perform a protective sweep and the agents who remained were securing the residence to prevent potential tampering. Furthermore, the Government has provided "articulable facts" justifying the security sweep in the first instance, namely the car alarm going off would lead a reasonable officer to believe someone else might be in the premises. Sharrar, 128 F.3d at 822-23. Additionally, the agents had a reasonable fear due to the threat of the "fatal funnel."

The Court will not address the legality of the method the Government used to secure the residence in this instance, since there is no evidence that Agent Goodwin used any illegally obtained information in producing his affidavit. All of the factual averments in his affidavit attached to the search warrant were obtained prior to the arrest (the driver's license and the neighbor's identification of Defendant Brown as the owner of 924 Chanticleer Drive), during the legal security sweep (the vehicle's tag information), or during an investigation independent of any happenings at 924 Chanticleer Drive (the information from the condominium office). As such, the Court finds that the Government had an independent basis for the search warrant unrelated to any potentially illegal search. Segura, 468 U.S. at 799; Perez, 280 F.3d at 338.

Finally, even if the Court were to determine that the security sweep was unlawful, the only averment in the affidavit that arguably might then be improper is the one related to the vehicle. The Court finds that the remaining averments in the affidavit without consideration of the reference to the car provide "fair probability that contraband or evidence of a crime" would be found at 924 Chanticleer Drive. Gates, 462 U.S. at 238.

IV. CONCLUSION

For the foregoing reasons, the Court denies the Defendant's Motion to Suppress Physical Evidence Seized from 924 Chanticleer Drive. An appropriate Order consistent with this Memorandum follows.

BY THE COURT:

/S/ _____

GENE E. K. PRATTER
UNITED STATES DISTRICT JUDGE

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JASON BROWN	:	NO. 04-CR-505

ORDER

Gene E.K. Pratter, J.

January 26, 2005

AND NOW, this 26th day of January, 2005, upon consideration of Defendant Jason Brown's Motion to Suppress Seized from 924 Chanticleer Drive (Docket No. 32), the United State's Response to Motion (Docket No. 35), and the testimony, evidence, and arguments presented at the Suppression Hearing on January 7, 2005, it is hereby ORDERED that the Motion to Suppress (Docket No. 32) is DENIED.

BY THE COURT:

/S/

GENE E. K. PRATTER
UNITED STATES DISTRICT JUDGE